

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

V.

RICK BARTON, SR.,

Defendant.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Case No. 1:02CR00080-001

OPINION AND ORDER

By: James P. Jones
United States District Judge

Rick Barton, Sr., Pro Se Movant.

The defendant, a federal inmate, has filed a pro se motion seeking a reduction in the sentence imposed by this court. He relies on a provision of the First Step Act of 2018 amending 18 U.S.C. § 924(c)(1)(C) relating to subsequent convictions for the use or possession of a firearm in furtherance of a drug trafficking offense. Because that amendment does not apply retroactively to the defendant's sentence, I will deny his motion.

The defendant, Rick Barton, Sr., was convicted by a jury in this court of conspiracy to possess with intent to distribute and distribution of oxycodone and cocaine (Count One); 21 U.S.C. § 846; possession with intent to distribute and distribution of oxycodone and cocaine (Count Two), 21 U.S.C. § 841(a)(1); and four counts of possession of a firearm in furtherance of a drug trafficking offense (Counts

Three through Six), 18 U.S.C. § 924(c). He was sentenced on November 10, 2003, to a total term of 1,170 months in prison. The sentence was computed as follows: 210 months for Counts One and Two, to run concurrently; 60 months for Count Three to run consecutively; and 300 months each, to run consecutively, for Counts Four, Five, and Six.

Barton noted a timely appeal, and the court of appeals affirmed the convictions and sentence. *United States v. Barton*, 116 F. App'x 460, 464 (4th Cir. 2004) (unpublished). On certiorari, the Supreme Court vacated and remanded the case for further consideration in light of *United States v. Booker*, 543 U.S. 220 (2005). *Barton v. United States*, 546 U.S. 802 (2005). The court of appeals then re-affirmed Barton's convictions, but vacated his sentence and remanded to this court for resentencing based on *Booker*. *United States v. Barton*, 178 F. App'x 291, 293 (4th Cir. 2006) (unpublished).

This court resentenced the defendant by judgment entered August 14, 2006, to a total term of 1,020 months, consisting of 60 months for Counts One and Two, to run concurrently; 60 months for Count Three to run consecutively; and 300 months each, to run consecutively, for Counts Four, Five, and Six. Relying on *Booker*, the court varied downward as to Counts One and Two but was required to impose the statutory mandatory minimum consecutive sentences for Counts Three, Four, Five, and Six. *United States v. Barton*, 442 F. Supp. 2d 301 (W.D. Va. 2006)

(stating reasons for sentence), *aff'd.*, 216 F. App'x 355 (4th Cir.) (unpublished), *cert. denied*, 552 U.S. 835 (2007).

Barton's motion concerns the "stacking" of 924(c) convictions. As the Fourth Circuit has recently explained:

The First Step Act abrogated the Supreme Court's interpretation of § 924(c), expressly stating that a subsequent § 924(c) violation must occur "after a prior conviction under [§ 924(c)] has become final" to qualify for the enhanced mandatory minimum. § 403(a), 132 Stat. at 5222. "Under the First Step Act, in other words, the 25-year mandatory minimum is reserved for recidivist offenders, and no longer applies to multiple § 924(c) convictions obtained in a single prosecution." *United States v. Jordan*, 952 F.3d 160, 171 (4th Cir. 2020). . . . However, Congress expressly limited the retroactivity of this provision "to any offense that was committed before the date of [the First Step] Act, if a sentence for the offense has not been imposed as of such date of enactment." § 403(b), 132 Stat. at 5222.

United States v. Bond, 799 F. App'x 209, 210 (4th Cir. 2020) (unpublished).

Accordingly, because Barton's sentence was imposed prior to the enactment of the First Step Act, he is not entitled to a reduction based on the amended statute removing the stacking of § 924(c) convictions in the same prosecution. "Any reduction in criminal penalties will pose difficult line-drawing questions when it comes to retroactivity. Here, Congress decided to extend the more lenient terms of § 403(a) of the First Step Act to some but not all pre-Act offenders, with the date of sentencing in the district court drawing the line between those who are covered and those who are not." *Jordan*, 952 F.3d at 174 (internal quotation marks and citations omitted).

For these reasons, it is **ORDERED** that the Motion for a Reduction in Sentence Pursuant to Section 403 of the First Step Act of 2018, ECF No. 108, is DENIED.

ENTER: May 4, 2020

/s/ JAMES P. JONES
United States District Judge